

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

05) 11530 NG
JEFFREY BAUER and)
MARY BAUER,)
)
Plaintiffs,)
)
V.) Civil Action No.
)
WILLIAM K. HAAS,)
)
Defendant.)
MAGISTRATE JUDGE RBC

RECEIPT #
AMOUNT \$ 250
SUMMONS ISSUED 4
LOCAL RULE 4.1
WAIVER FORM
MCF ISSUED
BY DPTY. CLK. RBC
DATE 7/20/05

PLAINTIFFS' COMPLAINT AND JURY DEMAND

Parties

1. The Plaintiff, Jeffrey Bauer is an individual whom resides at 30 Deerfield Lane South, Pleasantville, New York.
2. The Plaintiff, Mary Bauer, is an individual whom resides at 30 Deerfield Lane South, Pleasantville, New York.
3. Upon information and belief, the Defendant, William K. Haas is an individual whom resides at 1581 Ten Rod Road, Exeter, Rhode Island.

Jurisdiction

4. Jurisdiction is proper in the United States District Court for the District of Massachusetts pursuant to diversity jurisdiction as provided for by 28 U.S.C. § 1332.
5. The parties are citizens of different states with the Plaintiffs residing and holding their domicile in New York and the defendant residing and maintaining his domicile in Rhode Island.

6. The subject matter of the litigation surrounds the retention of a one hundred thousand dollar (\$ 100,000.00) deposit paid by the plaintiff for the purchase of real property located in Tisbury, Massachusetts.

Venue

7. The events comprising this litigation have occurred in Massachusetts together with the real property to which this litigation relates. In addition, the \$ 100,000.00 deposit which is the principal amount in controversy in this litigation currently being held in escrow in West Tisbury, Massachusetts within the United States District of Massachusetts.

Factual Background

8. On or about sometime in May, 2005, the plaintiffs and defendant entered into a binding Purchase and Sale Agreement (hereinafter "Agreement") for a plot of vacant land consisting of approximately 1.25 acres and situated along John Hoft Road located in Tisbury, Massachusetts.

9. The Agreement called for the defendant to "convey a good and clear record and marketable title thereto..."

10. The defendant could not convey clear and marketable title as the property did not contain a formal grant of access.

11. The plaintiffs performed each and every obligation that they were required to perform pursuant to the Agreement.

12. Paragraph 10 of the Agreement contained a provision that allowed for a brief extension of time for the defendant [seller] to perfect any title issues. The Agreement stated in pertinent part, "[i]f the Seller shall be unable to give title or to make conveyance, or to deliver possession of the Premises, all as herein stipulated, or if at the time of the delivery of the deed the Premises do not conform with the provisions hereof, then the Seller shall use reasonable efforts to remove any

defects in title, or to deliver possession as provided herein, or to make the Premises conform to the provisions hereof, as the case may be, in which event the Time of Closing shall be extended for a period of thirty (30) days or the expiration of the Buyers mortgage commitment date, whichever is sooner...”

13. Paragraph 11 of the Agreement required that if at the expiration of the extended time pursuant to paragraph 10 of the Agreement, the defendant had not cured the defects in title, then at the Buyer’s option, the Agreement could be voided, and any payments made to be forthwith refunded leaving the parties without any further recourse pursuant to the Agreement.

14. The Closing was scheduled for 2:00 p.m. on June 28, 2005.

15. On June 28, 2005, the defendant could not convey clear and marketable title to the subject property because there was never an easement for access or some explicit grant of access provided to and recorded by the defendant.

16. The Plaintiffs’ mortgage commitment expired on July 1, 2005.

17. Pursuant to the Agreement, the plaintiffs, through their attorney notified the defendant that they were canceling the Agreement and demanded the return of their deposit.

18. The deposit is being held by Tea Lane Associates as escrow agent for this transaction.

19. The defendant has refused to provide his assent to the return of the plaintiffs’ deposit.

COUNT ONE – BREACH OF CONTRACT

20. The Plaintiffs reallege each and every allegation above stated as if fully restated herein.

21. The Agreement constituted a binding contract and obligation between the Plaintiffs and Defendant.

22. The Defendant has breached the contract by failing to perform under the contract and return or otherwise provide assent for the return of Plaintiffs’ deposit.

23. As a proximate result of the defendant's actions, the plaintiffs have been damaged and will likely sustain additional costs and consequential damages through the defendant's breach of contract.

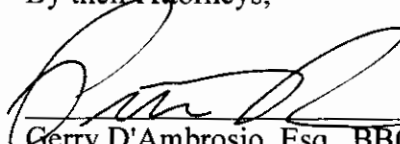
PRAYERS FOR RELIEF

WHEREFORE, the plaintiffs pray that this Honorable Court:

- a. Enter judgment for the plaintiffs against the defendant;
- b. Award the plaintiff costs, interest, attorney's fees, and other such further relief as the Court deems just and proper.

THE PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL ISSUES AND MATTERS

Respectfully submitted,
Plaintiffs,
Jeffrey Bauer & Mary Bauer
By their Attorneys,



Gerry D'Ambrosio, Esq., BBO #564199
Peter A. Brown, Esq., BBO #654805
D'Ambrosio Law Offices
C-1 Shipway Place
Boston, MA 02109
T. 617-720-5657
F. 617-723-4967

DATED: July 19, 2005

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS1. Title of case (name of first party on each side only) Jeffrey Bauer v. William K. Haas

2. Category in which the case belongs based upon the numbered figure of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 198, 388, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 111 for patent, trademark or copyright cases.
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 1150, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

None

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES ☐ NO ☒

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ N/A Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (yes, submit a separate sheet identifying the motions)

YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Peter A. BrownADDRESS 61 Shipway Place, Boston, MA 02129TELEPHONE NO. 617-760-5697

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

DEFENDANTS

(b) County of Residence of First Listed Plaintiff Westchester, NY
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Washington County, RI
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number) (617)
D'Ambrosio Law Offices 720-5657
C1 Shipway Place, Boston, MA 02129

Attorneys (If Known) (508) 693-7733
George Brush, Esq.
P.O. Box 1317, West Tisbury, MA 02575

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION

Brief description of cause:

Breach of Purchase and Sale Agreement due to refusal to return deposit.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

100,000.00 +

CHECK YES only if demanded in complaint

JURY DEMAND:

☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____